

SOUTH FLORIDA WATER MANAGEMENT DISTRICT  
3301 GUN CLUB ROAD  
WEST PALM BEACH FLORIDA

IN THE MATTER OF:

ORDER NO. 00-57 DAO-WS

Declaration of a Water Shortage  
Emergency and Imposition of  
Phase II Water Restrictions within  
Caloosahatchee River Water Use Basin,  
Caloosahatchee River Watershed North,  
Caloosahatchee River Watershed South,  
The Western-most Portion of South-Hendry  
County/L-28 Gap Water Use Basin, Fakahatchee  
North Water Use Basin, Fakahatchee South Water  
Use Basin, Coastal Collier County Water Use Basin

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**DECLARATION OF A WATER SHORTAGE EMERGENCY AND IMPOSITION OF  
PHASE II SEVERE WATER SHORTAGE RESTRICTIONS FOR Caloosahatchee  
River Water Use Basin, Caloosahatchee River Watershed North, Caloosahatchee  
River Watershed South, The Western-most Portion of South-Hendry County/L-28  
Gap Water Use Basin, Fakahatchee North Water Use Basin, Fakahatchee South  
Water Use Basin, Coastal Collier County Water Use Basin  
and  
IMPOSITION OF INCREASED MONITORING AND REPORTING REQUIREMENTS  
PURSUANT TO RULE 40E-21.401, F.A.C.**

The Executive Director of the South Florida Water Management District (SFWMD), after considering recommendations of SFWMD staff and being otherwise fully apprised of the matter, issues the following Emergency Order declaring a Water Shortage Emergency and Imposing Phase II Severe Water Shortage Restrictions (Emergency Order), pursuant to Rule 40E-21.331, F.A.C.

**FINDINGS OF FACT**

1. The area determined to be under stress is depicted in Composite Exhibit A, which is attached and incorporated into this Emergency Order, and is described as: Those portions of Glades, Hendry, Collier, Lee, and Charlotte Counties which are within the Caloosahatchee River Water Use Basin, Caloosahatchee River Watershed North,

Caloosahatchee River Watershed South, The Western-most Portion of South-Hendry County/L-28 Gap Water Use Basin, Fakahatchee North Water Use Basin, Fakahatchee South Water Use Basin, Coastal Collier County Water Use Basin, and are within the jurisdiction of the District.

2. The sources of surface water supply that are affected by this Emergency Order include all surface water bodies within the above mentioned water use basins as identified in Composite Exhibit A, except for the Caloosahatchee River or canal, or tributaries connected to the Caloosahatchee River.

3. The sources of ground water affected by this Emergency Order include water from the Water Table, Lower Tamiami, Sandstone, and Mid-Hawthorn Aquifers.

4. On the southwest coast of Florida, surface water, the Water Table Aquifer, the Lower Tamiami Aquifer, the Sandstone Aquifer, and the Mid-Hawthorn Aquifer normally receive recharge from rainfall during the wetter months of June through October. Water levels within these sources decline during the dry months of November through May, due to higher demands and reduced rainfall. For the year to date, the Lower West Coast Basins have received only 5.42" of rain, this is 41% of the 13.18" average rainfall for this time period. Since April 16, 2000 the Lower West Coast has received only 0.69" of rainfall, this is 15% of the 4.72" of average rainfall for this time period. Additionally, for the dry season (November through May) rainfall deficit exceeds a 1 in 10 year drought event.

5. Based upon data from the National Oceanographic and Atmospheric Administrations' Climate Prediction Center, for the reporting period of March 1, 2000 through May 16, 2000, the temperature has been between 0.83° and 0.93° Celsius

warmer than the climatological average for this time. This warmer than average temperature contributes to above normal evapotranspiration.

6. Water use in the affected area has increased in response to the reduced rainfall and increased evapotranspiration conditions. Pumpage data for the month of April from utilities indicate increases in pumpage between 4.5% and 31.7% over the same period in 1998, and 3.9% to 4.6% increase in pumpage over the same period last year, when Phase I restrictions were in place.

7. Water levels in surface water canals and in the Water Table Aquifer are generally 2 feet or more below normal for this time of year. Continued reduction in surface water levels and connected aquifer levels may result in serious harm through saltwater intrusion.

8. Water levels within the Lower Tamiami Aquifer along coastal Collier County and southwestern Lee County are 3 to 6 feet below mean sea level. Continued reduction in the Lower Tamiami Aquifer may cause serious harm through saltwater intrusion.

9. Water levels in the Sandstone Aquifer have reached record low levels and a number of well water levels within eastern Lee County and western Hendry County are between 12 feet and 50 feet below land surface. These conditions are sufficient to cause well failures for domestic wells using suction type pumps. To date, the SFWMD has received 43, and verified over 27, complaints of domestic well failures in the Sandstone Aquifer within Lee, Hendry, and southwestern Glades Counties.

10. Water levels within the Mid-Hawthorne Aquifer in Lee County are 35 feet to 60 feet below land surface, with several monitoring stations reporting all-time low levels. To date, 9 domestic well failure complaints have been received, and 3 have been confirmed,

in wells which utilize the Mid-Hawthorne Aquifer. In addition, increased potential for serious harm due to saltwater intrusion occurs when levels continue to decline below sea level.

11. The wet season, which normally begins between May 15<sup>th</sup> and June 1<sup>st</sup> has not yet materialized. Water use allocations for irrigation are based upon supplemental irrigation requirements during a 1 in 5 to a 1 in 10 year drought condition. Rainfall conditions currently being experienced and anticipated to occur are more severe than a 1 in 10 year drought condition. Therefore, it is anticipated that demands for water use will be maximized during this period, increasing the potential for serious harm to the water resources.

12. Based on the unanticipated below average rainfall received over the recent dry season, higher than normal temperatures, projected high levels of user demands during this dry period, and unanticipated continuing decline in already low surface water and groundwater levels, the potential for serious harm to the water resources is significant. An emergency action to reduce consumptive use withdrawals from these sources is immediately necessary.

13. Monitoring in accordance with Rule 40E-21.401, F.A.C. may be required as necessary to determine reduction in usage of water. Required monitoring is set forth in the Order section.

#### **ULTIMATE FACTS AND CONCLUSION OF LAW**

14. Sections 373.175 and 373.246, F.S., authorize the Governing Board to declare a water shortage within all or part of the District, where insufficient ground or surface water is available to meet the present and anticipated needs of the users or when

conditions are such as to require reduction in total use within the area to protect water resources from serious harm.

15. Section 373.246, F.S., authorizes the Governing Board to adopt a water shortage plan to regulate the withdrawal and use of water under these circumstances. Chapter 40E-21, F.A.C., is the water shortage plan adopted by the Governing Board.

16. Section 373.246(7), F.S., authorizes the Executive Director with the concurrence of the Governing Board to issue *emergency orders* where the public health, safety, or welfare; the health of animals, fish, or aquatic life; a public water supply; or recreational, commercial, industrial, agricultural, or other reasonable uses are not sufficiently protected by the water shortage plan. This *emergency order* shall recite the existence of such an emergency and require that such action, including, but not limited to, apportioning, rotating, limiting, or prohibiting the use of the water resources of the district, be taken as necessary to protect the water resources of the District from serious harm and to restore them to their previous condition.

17. The District has monitored the condition of the water resources and the needs of the users as required by Rule 40E-21.331, F.A.C.

18. The District has compared current data with historical data and has determined the estimated present and anticipated available water supply within the same class will be insufficient to protect the public health, safety or welfare, or the health of animals, fish or aquatic life, a public water supply, or commercial, industrial, agricultural, recreational, or other reasonable-beneficial use, as required by section 373.246(7), F.S. and Rule 40E-21.331(3), F.A.C.

19. Based on the unanticipated below average rainfall received during the recent dry

season, projected levels of user demands during this dry period, and continuing decline in already low surface water and groundwater levels, the potential for serious harm to the water resources is significant, as contemplated under Section 373.246(7), F.S.

20. As a result of the facts stated in paragraphs 17, 18, and 19 of this Emergency Order, an emergency action to reduce consumptive use withdrawals from these sources is necessary, as provided by Section 373.246(7), F.S.

### **ORDER**

Based upon the above Findings of Fact and Ultimate Facts and Conclusions of Law, the Governing Board hereby ORDERS:

21. An emergency water shortage for the affected area as described in Exhibit A is declared pursuant to Rule 40E-21.331, F.A.C and Section 373.246, F.S.

22. Beginning on the effective date of this Emergency Order, Phase II Water Shortage Restrictions are imposed, in accordance with Section 373.246, F.S., and Rule 40E-21.331(6), F.A.C., for the areas described in paragraph # 3 of this Emergency Order. A copy of the Phase II restrictions in Rule 40E-21.531, F.A.C. is attached as Exhibit B.

23. Beginning on the effective date of this Emergency Order, all public utility water use permit holders in the affected areas as depicted in Exhibit A and paragraph #3 shall collect pumpage, water level and water quality data daily as described in their individual permit and submit all such data to the SFWMD on a weekly basis, pursuant to the standard permit condition in all individual water use permits and Rule 40E-21.401(2)(c), F.A.C. Submittals under this paragraph shall be submitted to the Compliance Officer, Water Use Permitting Department, South Florida Water Management District, P.O. Box

24680, West Palm Beach, FL 33416-4680.

24. A user may request relief from a Water Shortage Order by filing an application for variance in accordance with Rule 40E-21.275, F.A.C., but must conform to the water use restrictions until the Executive Director grants a temporary variance or the Board grants the variance.

25. The Executive Director of the District and all law enforcement authorities and appropriate city and county officials may enforce the Governing Board's regulations and orders adopted pursuant to its legal authority by administrative action, by suit for injunction, by criminal proceedings, or other appropriate action as authorized by Chapter 373, F.S., and by adoption and enforcement of local government ordinances for such purposes.

26. In accordance with Rule 40E-21.391(5), F.A.C., an order declaring a water shortage emergency and any measures adopted pursuant thereto shall become effective upon issuance, unless otherwise specified in the order. The Phase II Severe Water Restrictions imposed by this Emergency Order shall become effective at 12:01 a.m. on Wednesday, May 31, 2000.

27. In accordance with Rule 40E-21.391(5), F.A.C. an order declaring a water shortage emergency and any measures adopted pursuant thereto shall remain in effect until modified or rescinded by the Executive Director with the advice and concurrence of the Board or by order of the Board.

#### **NOTICE OF RIGHTS**

Section 120.569(1), Fla. Stat. (1997), requires that "each notice shall inform the recipient of any administrative hearing or judicial review that is available under this section, s. 120.57, or s. 120.68; shall indicate the procedure which must be followed to

obtain the hearing or judicial review, and shall state the time limits which apply.” Please note that this Notice of Rights is not intended to provide legal advice. Not all the legal proceedings detailed below may be an applicable or appropriate remedy. You may wish to consult an attorney regarding your legal rights.

### **Petition for Administrative Proceedings**

1. A person whose substantial interests are affected by the South Florida Water Management District’s (SFWMD) action has the right to request an administrative hearing on that action. The affected person may request either a formal or an informal hearing, as set forth below. A point of entry into administrative proceedings is governed by Rules 28-106.111 and 40E-1.511, Fla. Admin. Code, (also published as an exception to the Uniform Rules of Procedure as Rule 40E-0.109), as set forth below. Petitions are deemed filed upon receipt of the original documents by the SFWMD Clerk.

- a. Formal Administrative Hearing: If a genuine issue(s) of material fact is in dispute, the affected person seeking a formal hearing on a SFWMD decision which does or may determine their substantial interests shall file a petition for hearing pursuant to Sections 120.569 and 120.57(1), Fla. Stat. or for mediation pursuant to Section 120.573, Fla. Stat. within 21 days, except as provided in subsections c. and d. below, of either written notice through mail or posting or publication of notice that the SFWMD has or intends to take final agency action. Petitions must substantially comply with the requirements of Rule 28-106.201(2), Fla. Admin. Code, a copy of the which is attached to this Notice of Rights.
- b. Informal Administrative Hearing: If there are no issues of material fact in dispute, the affected person seeking an informal hearing on a SFWMD decision which does or may determine their substantial interests shall file a petition for hearing pursuant to Sections 120.569 and 120.57(2), Fla. Stat. or for mediation pursuant to Section 120.573, Fla. Stat. within 21 days, except as provided in subsections c. and d. below, of either written notice through mail or posting or publication of notice that the SFWMD has or intends to take final agency action. Petitions must substantially comply with the requirements of Rule 28-106.301(2), Fla. Admin. Code, a copy of the which is attached to this Notice of Rights.
- c. Administrative Complaint and Order: If a Respondent objects to a SFWMD Administrative Complaint and Order, pursuant to Section 373.119, Fla. Stat. (1997), the person named in the Administrative Complaint and Order may file a petition for a hearing no later than 14 days after the date such order is served. Petitions must substantially comply with the requirements of either subsection a. or b. above.
- d. State Lands Environmental Resource Permit: Pursuant to Section 373.427, Fla. Stat., and Rule 40E-1.511(3), Fla. Admin. Code (also published as an exception to the Uniform Rules of Procedure as Rule 40E-0.109(2)(c), a petition objecting to the SFWMD’s agency action regarding consolidated applications for Environmental Resource Permits and Use of Sovereign Submerged Lands (SLERPs), must be filed within 14 days of the notice of consolidated intent to grant or deny the SLERP. Petitions must substantially comply with the requirements of either subsection a. or b. above.



- e. Emergency Authorization and Order: A person whose substantial interests are affected by a SFWMD Emergency Authorization and Order, has a right to file a petition under Sections 120.569, 120.57(1), and 120.57(2), Fla. Stat., as provided in subsections a. and b. above. However, the person, or the agent of the person responsible for causing or contributing to the emergency conditions shall take whatever action necessary to cause immediate compliance with the terms of the Emergency Authorization and Order.
- f. Order for Emergency Action: A person whose substantial interests are affected by a SFWMD Order for Emergency Action has a right to file a petition pursuant to Rules 28-107.005 and 40E-1.611, Fla. Admin. Code, copies of which are attached to this Notice of Rights, and Section 373.119(3), Fla. Stat., for a hearing on the Order. Any subsequent agency action or proposed agency action to initiate a formal revocation proceeding shall be separately noticed pursuant to section g. below.
- g. Permit Suspension, Revocation, Annulment, and Withdrawal: If the SFWMD issues an administrative complaint to suspend, revoke, annul, or withdraw a permit, the permittee may request a hearing to be conducted in accordance with Sections 120.569 and 120.57, Fla. Stat., within 21 days of either written notice through mail or posting or publication of notice that the SFWMD has or intends to take final agency action. Petitions must substantially comply with the requirements of Rule 28-107.004(3), Fla. Admin. Code, a copy of the which is attached to this Notice of Rights.

2. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the SFWMD's final action may be different from the position taken by it previously. Persons whose substantial interests may be affected by any such final decision of the SFWMD shall have, pursuant to Rule 40E-1.511(2), Fla. Admin. Code (also published as an exception to the Uniform Rules of Procedure as Rule 40E-0.109(2)(c), an additional 21 days from the date of receipt of notice of said decision to request an administrative hearing. However, the scope of the administrative hearing shall be limited to the substantial deviation.

3. Pursuant to Rule 40E-1.511(4), Fla. Admin. Code, substantially affected persons entitled to a hearing pursuant to Section 120.57(1), Fla. Stat., may waive their right to such a hearing and request an informal hearing before the Governing Board pursuant to Section 120.57(2), Fla. Stat., which may be granted at the option of the Governing Board.

4. Pursuant to Rule 28-106.111(3), Fla. Admin. Code, persons may file with the SFWMD a request for extension of time for filing a petition. The SFWMD, for good cause shown, may grant the extension. The request for extension must contain a certificate that the petitioner has consulted with all other parties, if any, concerning the extension and that the SFWMD and all other parties agree to the extension.

## **CIRCUIT COURT**

5. Pursuant to Section 373.617, Fla. Stat., any substantially affected person who claims that final agency action of the SFWMD relating to permit decisions constitutes an unconstitutional taking of property without just compensation may seek judicial review of the action in circuit court by filing a civil action in the circuit court in the judicial circuit in which the affected property is located within 90 days of the rendering of the SFWMD's final agency action.

6. Pursuant to Section 403.412, Fla. Stat., any citizen of Florida may bring an action for injunctive relief against the SFWMD to compel the SFWMD to enforce the laws of Chapter 373, Fla. Stat., and Title 40E, Fla. Admin. Code. The complaining party must file with the SFWMD Clerk a verified complaint setting forth the facts upon which the complaint is based and the manner in which the complaining party is affected. If the SFWMD does not take appropriate action on the complaint within 30 days of receipt, the complaining party may then file a civil suit for injunctive relief in the 15<sup>th</sup> Judicial Circuit in and for Palm Beach County or circuit court in the county where the cause of action allegedly occurred.

7. Pursuant to Section 373.433, Fla. Stat., a private citizen of Florida may file suit in circuit court to require the abatement of any stormwater management system, dam, impoundment, reservoir, appurtenant work or works that violate the provisions of Chapter 373, Fla. Stat.

## **DISTRICT COURT OF APPEAL**

8. Pursuant to Section 120.68, Fla. Stat., a party who is adversely affected by final SFWMD action may seek judicial review of the SFWMD's final decision by filing a notice of appeal pursuant to Florida Rule of Appellate Procedure 9.110 in the Fourth District Court of Appeal or in the appellate district where a party resides and filing a second copy of the notice with the SFWMD Clerk within 30 days of rendering of the final SFWMD action.

## **LAND AND WATER ADJUDICATORY COMMISSION**

9. A party to a "proceeding below" may seek review by the Land and Water Adjudicatory Commission (LAWAC) of SFWMD's final agency action to determine if such action is consistent with the provisions and purposes of Chapter 373, Fla. Stat. Pursuant to Section 373.114, Fla. Stat., and Rules 42-2.013 and 42-2.0132, Fla. Admin. Code, a request for review of (a) an order or rule of the SFWMD must be filed with LAWAC within 20 days after rendition of the order or adoption of the rule sought to be reviewed; (b) an order of the Department of Environmental Protection (DEP) requiring amendment or repeal of a SFWMD rule must be filed with LAWAC within 30 days of rendition of the DEP's order, and (c) a SFWMD order entered pursuant to a formal administrative hearing under Section 120.57(1), Fla. Stat., must be filed no later than 20 days after rendition of the SFWMD's final order. Simultaneous with filing, a copy of the request for review must be served on the DEP Secretary, any person named in the SFWMD or DEP final order, and all parties to the proceeding below. A copy of Rule 42-2.013, Fla. Admin. Code is attached to this Notice of Rights.

## **PRIVATE PROPERTY RIGHTS PROTECTION ACT**

10. A property owner who alleges a specific action of the SFWMD has inordinately burdened an existing use of the real property, or a vested right to a specific use of the real property, may file a claim in the circuit court where the real property is located within 1 year of the SFWMD action pursuant to the procedures set forth in Subsection 70.001(4)(a), Fla. Stat.

## **LAND USE AND ENVIRONMENTAL DISPUTE RESOLUTION**

11. A property owner who alleges that a SFWMD development order (as that term is defined in Section 70.51(2)(a), Fla. Stat. to include permits) or SFWMD enforcement action is unreasonable, or unfairly burdens the use of the real property, may file a request for relief with the SFWMD within 30 days of receipt of the SFWMD's order or notice of agency action pursuant to the procedures set forth in Subsections 70.51(4) and (6), Fla. Stat.

## **MEDIATION**

12. A person whose substantial interests are, or may be, affected by the SFWMD's action may choose mediation as an alternative remedy under Section 120.573, Fla. Stat. Pursuant to Rule 28-106.111(2), Fla. Admin. Code, the petition for mediation shall be filed within 21 days of either written notice through mail or posting or publication of notice that the SFWMD has or intends to take final agency action. Choosing mediation will not affect the right to an administrative hearing if mediation does not result in settlement.

Pursuant to Rule 28-106.402, Fla. Admin. Code, the contents of the petition for mediation shall contain the following information:

- (1) the name, address, and telephone number of the person requesting mediation and that person's representative, if any;
- (2) a statement of the preliminary agency action;
- (3) an explanation of how the person's substantial interests will be affected by the agency determination; and
- (4) a statement of relief sought.

As provided in Section 120.573, Fla. Stat. (1997), the timely agreement of all the parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, Fla. Stat., for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within 60 days of the execution of the agreement. If mediation results in settlement of the dispute, the SFWMD must enter a final order incorporating the agreement of the parties. Persons whose substantial interest will be affected by such a modified agency decision have a right to petition for hearing within 21 days of receipt of the final order in accordance with the requirements of Sections 120.569 and 120.57, Fla. Stat., and SFWMD Rule 28-106.201(2), Fla. Admin. Code. If

mediation terminates without settlement of the dispute, the SFWMD shall notify all parties in writing that the administrative hearing process under Sections 120.569 and 120.57, Fla. Stat., remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action.

## **VARIANCES AND WAIVERS**

13. A person who is subject to regulation pursuant to a SFWMD rule and believes the application of that rule will create a substantial hardship or will violate principles of fairness (as those terms are defined in Subsection 120.542(2), Fla. Stat.) and can demonstrate that the purpose of the underlying statute will be or has been achieved by other means, may file a petition with the SFWMD Clerk requesting a variance from or waiver of the SFWMD rule. Applying for a variance or waiver does not substitute or extend the time for filing a petition for an administrative hearing or exercising any other right that a person may have concerning the SFWMD's action. Pursuant to Rule 28-104.002(2), Fla. Admin. Code, the petition must include the following information:

- (a) the caption shall read:  
Petition for (Variance from) or (Waiver of) Rule (Citation)
- (b) The name, address, telephone number and any facsimile number of the petitioner;
- (c) The name, address telephone number and any facsimile number of the attorney or qualified representative of the petitioner, (if any);
- (d) the applicable rule or portion of the rule;
- (e) the citation to the statute the rule is implementing;
- (f) the type of action requested;
- (g) the specific facts that demonstrate a substantial hardship or violation of principals of fairness that would justify a waiver or variance for the petitioner;
- (h) the reason why the variance or the waiver requested would serve the purposes of the underlying statute; and
- (i) a statement of whether the variance or waiver is permanent or temporary, If the variance or waiver is temporary, the petition shall include the dates indicating the duration of the requested variance or waiver.

A person requesting an emergency variance from or waiver of a SFWMD rule must clearly so state in the caption of the petition. In addition to the requirements of Section 120.542(5), Fla. Stat. pursuant to Rule 28-104.004(2), Fla. Admin. Code, the petition must also include:

- a) the specific facts that make the situation an emergency; and
- b) the specific facts to show that the petitioner will suffer immediate adverse effect unless the variance or waiver is issued by the SFWMD more expeditiously than the applicable timeframes set forth in Section 120.542, Fla. Stat.

## **WAIVER OF RIGHTS**

14. Failure to observe the relevant time frames prescribed above will constitute a waiver of such right.

## **INITIATION OF PROCEEDINGS (INVOLVING DISPUTED ISSUES OF MATERIAL FACT) (28-106.201, F.A.C.)**

- (2) All petitions filed under these rules shall contain:
- (a) The name and address of each agency affected and each agency's file or identification number, if known;
  - (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding, and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
  - (c) A statement of when and how the petitioner received notice of the agency decision;
  - (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
  - (e) A concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief; and
  - (f) A demand for relief.

## **INITIATION OF PROCEEDINGS (NOT INVOLVING DISPUTED ISSUES OF MATERIAL FACT) (28-106.301, F.A.C.)**

- (2) All petitions filed under these rules shall contain:
- (a) The name and address of each agency affected and each agency's file or identification number, if known;
  - (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding, and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
  - (c) A statement of when and how the petitioner received notice of the agency decision;
  - (d) A concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief; and
  - (e) A demand for relief.

## **SUSPENSION, REVOCATION, ANNULMENT, OR WITHDRAWAL (28-107.04, F.A.C.)**

- (3) Requests for hearing filed in accordance with this rule shall include:

- (a) The name and address of the party making the request, for purposes of service;
- (b) A statement that the party is requesting a hearing involving disputed issues of material fact, or a hearing not involving disputed issues of material fact; and
- (c) A reference to the notice, order to show cause, administrative complaint, or other communication that the party has received from the agency.

**REQUEST FOR REVIEW PURSUANT TO SECTION 373.114 OR 373.217 (42-2.013, F.A.C.)**

(1) In any proceeding arising under Chapter 373, F.S., review by the Florida Land and Water Adjudicatory Commission may be initiated by the Department or a party by filing a request for such review with the Secretary of the Commission and serving a copy on any person named in the rule or order, and on all parties to the proceeding which resulted in the order sought to be reviewed. A certificate of service showing completion of service as required by this subsection shall be a requirement for a determination of sufficiency under Rule 42-2.0132. Failure to file the request with the Commission within the time period provided in Rule 42-2.0132 shall result in dismissal of the request for review.

(2) The request for review shall identify the rule or order requested to be reviewed, the proceeding in which the rule or order was entered and the nature of the rule or order. A copy of the rule or order sought to be reviewed shall be attached. The request for review shall state with particularity.

- (a) How the order or rule conflicts with the requirements, provisions and purposes of Chapter 373, F.S., or rules duly adopted thereunder;
- (b) How the rule or order sought to be reviewed affects the interests of the party seeking review;
- (c) The oral or written statement, sworn or unsworn, which was submitted to the agency concerning the matter to be reviewed and the date and location of the statement, if the individual or entity requesting the review has not participated in a proceeding previously instituted pursuant to Chapter 120, F.S., on the order for which review is sought;
- (d) If review of an order is being sought, whether and how the activity authorized by the order would substantially affect natural resources of statewide or regional significance, or whether the order raises issues of policy, statutory interpretation, or rule interpretation that have regional or statewide significance from a standpoint of agency precedent, and all the factual bases in the record which the petitioner claims support such determination(s); and
- (e) The action requested to be taken by the Commission as a result of the review, whether to rescind or modify the order, or remand the proceeding to the water management district for further action, or to require the water management district to initiate rulemaking to adopt, amend or repeal a rule.

**EMERGENCY ACTION (28-107.005, F.A.C.)**

- (1) If the agency finds that immediate serious danger to the public health, safety, or welfare requires emergency action, the agency shall summarily suspend, limit, or restrict a license.
- (2) The 14-day notice requirement of Section 120.569(2)(b), F. S., does not apply and shall not be construed to prevent a hearing at the earliest time practicable upon request of an aggrieved party.
- (3) Unless otherwise provided by law, within 20 days after emergency action taken pursuant to paragraph (1) of this rule, the agency shall initiate a formal suspension or revocation proceeding in compliance with Sections 120.569, 120.57. and 120.60, F.S.

**EMERGENCY ACTION (40E-1.611, F.A.C.)**

- (1) An emergency exists when immediate action is necessary to protect public health, safety or welfare; the health of animals, fish or aquatic life; the works of the District; a public water supply, or recreational, commercial, industrial, agricultural or other reasonable uses of land and water resources.
- (2) The Executive Director may employ the resources of the District to take whatever remedial action necessary to alleviate the emergency condition without the issuance of an emergency order, or in the event an emergency order has been issued, after the expiration of the requisite time for compliance with that order.

**DONE AND SO ORDERED** at West Palm Beach, Palm Beach County, Florida,  
on this \_\_\_\_\_ day of May, 2000.

SOUTH FLORIDA WATER MANAGEMENT  
DISTRICT  
BY: \_\_\_\_\_  
FRANK FINCH, P.E.  
Executive Director

LEGAL FORM APPROVED:  
BY: \_\_\_\_\_  
JOHN J. FUMERO  
General Counsel

FILED WITH THE CLERK OF THE SOUTH  
FLORIDA WATER MANAGEMENT DISTRICT

BY: \_\_\_\_\_

ON: \_\_\_\_\_